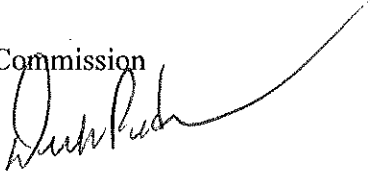


State of Oregon
Department of Environmental Quality

Memorandum

Date: Sept. 27, 2013

To: Environmental Quality Commission

From: Dick Pedersen, Director 

Subject: Agenda item L, Informational item: Update to DEQ's civil penalty rules, OAR Chapter 340, Divisions 11 and 12
Oct. 16-17, 2013, EQC meeting

Purpose of item This item will provide the commission with background on DEQ's enforcement process and rules. Secondly, the item will provide the commission with the background and an update on proposed changes to those rules, which DEQ will present for commission action at its December 2012 meeting.

Background and other information DEQ may assess monetary penalties and issues compliance orders when regulated parties violate permit conditions or otherwise cause environmental harm. These actions must be done according to administrative procedures statutes, the Attorney General Model Rules, supplemental procedural rules in DEQ's Division 11 and rules that set out DEQ's penalty-calculation process in DEQ's Division 12. DEQ is currently engaged in a rulemaking to amend both Divisions 11 and 12.

Division 11 includes rules that supplement the Oregon Attorney General Model Rules for administrative procedures. Division 11 applies to any person involved in a contested case proceeding in front of the commission. The rules outline the contested case hearings process. The rules also include procedures for rulemaking and public records requests.

Proposed changes to Division 11 reflect changes to align with the current Oregon Attorney General Model Rules, and the Water Quality Policy Option Package 120, approved by the 2013 Oregon Legislature, that would establish a base fee of \$7.50 for records request for DEQ's onsite program. There are also housekeeping changes.

Division 12 outlines the types of informal and formal enforcement actions that DEQ may take and sets out how penalties must be calculated, based on a number of considerations to tailor the size of the penalty to the seriousness of the violation and surrounding circumstances. The proposed Division 12 amendments would implement Senate Bill 105A, approved by the 2009 Oregon Legislature, which increased DEQ's civil penalty statutory maximums. Most of the penalty maximums were last updated in 1973. Other proposed changes include aligning violation classification and magnitudes

with DEQ program priorities, providing greater mitigating credit for correcting violations and housekeeping changes.


Stakeholder involvement DEQ convened two advisory committees for the Division 12 rulemaking. One advisory committee focused on modifying penalties for spills of oil and hazardous materials. The other advisory committee focused on all of the other changes in Division 12. Each committee met twice with additional opportunities to review proposals and drafts. Both committees recognized the overall need to increase penalties and generally expressed approval of DEQ's proposals. Many of the committee recommendations will be included in the final proposed rule package.

Next steps The public comment period closed Sept. 20, 2013. DEQ is evaluating the comments received and developing responses. DEQ plans to present the proposed rule for commission action at the December 2013 EQC meeting.

Available online

1. Public notice documents via website
2. Senate Bill 105A
3. Water Quality Option Package #120

Approved:

Division: 

Report prepared by: Jenny Root